cutions, *Parkhurst* v. *Masteller,* 57 Iowa 474; in actions for slander or libel, *Davis* v. *Taconia Ry. & Power Co.,* 35 Wash. 203; and in actions brought by the father for the seduction of his daughter, *Phillips* v. *Hoyle,* 4 Gray 568. The common law doctrine based on *Lynch* v. *Knight,* 9 H. L. 577, and followed in Pennsylvania has of late been viewed with disfavor. *Bell* v. *G. N. R. Co.,* 26 L. R. Ir. 428; 2 MICH. LAW REV. 642. If mental and physical suffering co-exist, the mental suffering is estimated and compensated: how can it be more intangible and illusory when it exists alone? Such distinction is emphatically repudiated in *Smith* v. *Pittsburg, etc., Ry. Co.,* 23 Ohio St. 10 and *Head* v. *Ga. Pac. Ry. Co.,* 79 Ga. 358; and the cases in harmony with the leading case of *Mentzer* v. *Western Union Telegraph Co.,* 93 Iowa 752, seem logically correct. So *Relle* v. *Tel. Co.,* 55 Tex. 308; *Finch* v. *N. P. Ry. Co.,* 47 Minn. 36; *Wilson* v. *N. P. Ry. Co.,* 5 Wash. 621; *Barnes* v. *Western Union Tel. Co.,* 27 Nev. 438; *Lewis et al.* v. *Holmes,* 109 La. 1030; *Graham* v. *Western Union Tel. Co.,* 109 La. 1069; VOORHEIS, MEASURE OF DAMAGES, §§ 97, 98 and cases cited. See 1 SUTHERLAND ON DAMAGES (3rd ed.) pp. 60-76; also 2 MICH. LAW REV. 150, 226, 411, 485, 641.

DEED—DESCRIPTION—CONVEYANCE TO TRUSTEE—NECESSITY OF WORD "HEIRS"—RULE IN SHELLEY'S CASE—ADVERSE POSSESSION.—The owner of a tract of 150 acres undertook to convey the same to a trustee by two deeds; the first of 40 acres in trust for Nancy H. and, after her death, to convey to heirs of Isaac H.; the second of 110 acres, more or less, in trust for Isaac H. and after his death, with lawful issue, to his heir. The trustee died prior to 1880 and no trustee has been appointed. Isaac H. died in 1903. In 1876 the land was sold for taxes, the conveyance reciting ownership in Isaac H., and his failure to redeem. Plaintiffs are the children and heirs at law of Isaac H. and defendants claim under the tax sale and quitclaim deed of the sheriff, and have been in the exclusive possession of the property since 1884. *Held,* that the second deed conveyed the entire tract; that the word "heirs" was unnecessary to convey the fee to the trustee; that the Rule in Shelley's Case did not apply; that the tax deed conveyed only the life interest of Isaac H.; that the tax deed was not color of title as against the plaintiffs and that the defendants did not hold by adverse possession as against them until the death of the life tenant. *Smith et al.* v. *Proctor et al.* (1905),—N. C.—, 51 S. E. Rep. 889.

This case is noteworthy in the number of points of real property law raised, and the singular clearness with which the Court disposes of them. The first deed purported to cut off 40 acres from the main tract, but no data were given whereby to locate the division line, and it was therefore void because too vague and indefinite to pass any land. *Hanna* v. *Palmer,* 194 Ill. 41, 61 N. E. 1051; *Robeson* v. *Lewis,* 64 N. C. 734, 737; *Gaston* v. *Weir,* 84 Ala. 193, 4 So. 258. The second, however, while said to contain 110 acres, more or less, was described as "the tract known as the place where T. H. formerly resided." This description was sufficiently definite and comprehensive to embrace the entire tract and the first being void, the whole 150 acres passed under it, the averment as to quantity being disregarded. *Coleman* v. *Improvement Co.,* 94 N. Y. 229. It was contended that as the word "heirs" was

omitted, the trustee took a life estate merely, and at his death the land reverted to the grantor or his heirs. Prior to the Statute of 1879 the word "heirs" was generally necessary in North Carolina. In trust estates, however, as was clearly pointed out, the trustee will take precisely that quantum of legal estate which is necessary to the discharge of the declared powers and duties of the trust. *North* v. *Philbrook,* 34 Me. 532, 537; *Ewing* v. *Shannahan,* 113 Mo. 188, 20 S. W. 1065; *Angell* v. *Rosenbury,* 12 Mich. 241. And the unnecessary portion of the estate becomes executed by the Statute of Uses. *Schaffer et al.* v. *Lavretta et al.,* 57 Ala. 14, 18; *Watkins* v. *Reynolds et al.,* 123 N. Y. 211, 217. Here it was clearly intended that the fee should pass and the trustee was therefore given an estate commensurate therewith. If the Rule in Shelley's Case applied, it is clear that Isaac H. took the fee and the tax deed under which defendants claim conveyed a like estate. There are exceptions, however, to the construction given to these words whereby the grantor is conclusively presumed to use the terms "heirs or heirs of the body" in their legal significance as words of limitation. *Ware* v. *Richardson,* 3 Md. 505, 56 Am. Dec. 762. When either the estate limited to the ancestor or that limited to the heirs is a legal estate and the other is an equitable or trust estate, the rule does not apply. *Horne* v. *Lyeth,* 4 Har. and J. 432. Nor does it apply when, as in the case at bar, the grantor has so explained or qualified the word "heirs" that it is clear that he intended the words as a mere descriptio personarum and "that they and not the ancestor were to be the points of termini from which the succession to the estate was to emanate or take its start." *Ware* v. *Richardson,* supra. Here the words were "convey to the heir of Isaac H." and the word "heir" is a word of purchase. Under the statutes of North Carolina at the time merely the delinquent's interest was sold for taxes and the lands of a minor, lunatic or person non compos mentis were protected, so that the tax deed conveyed only the life estate of Isaac H. and not the interest of these plaintiffs who take in remainder. *Tucker* v. *Tucker,* 108 N. C. 235, 237, 13 S. E. 5. The tax deed could not furnish the defendants color of title on which to found adverse possession, because it conveyed merely the interest of the life tenant. The occupation of the defendants was neither adverse nor under color of title until the death of the life tenant for the simple reason that the remaindermen had no right of action against the defendants until 1903 when the death of the life tenant occurred. BUSWELL, LIM. AND ADV. POSS. § 237.

EVIDENCE—CORPORATIONS—BOOKS OF CORPORATION AS PROVING MEMBERSHIP.—Where it is sought to hold defendant to stockholder's liability, *held* that the books of the corporation are not admissible for proving him a stockholder. *Girard Life Insurance Annuity and Trust Co.* v. *Loving* (1905), — Kan. —, 81 Pac. Rep. 200.

This decision is supported by the recent case of *Welch* v. *Gillelen* (1905), — Calif. —, 82 Pac. Rep. 248. This seems on principle to be the better doctrine, but it is by no means, as stated in the principal case, "supported by the overwhelming weight of authority whether of text writers or decided cases." PURDY'S BEACH CORPORATIONS § 225 takes the view that such records are prima facie proof that one is a subscriber. To the same effect are CLARK AND